

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<b>GARY LYNN MOYER,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>CIV-05-1085-R</b>
	)	
<b>WARDEN DAVID MILLER, et al.,</b>	)	
	)	
<b>Respondents.</b>	)	

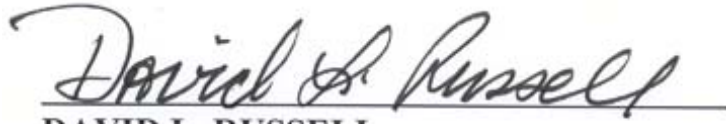
**ORDER**

Before the Court are the Report and Recommendation of United States Magistrate Judge Robert E. Bacharach entered October 28, 2005 and Petitioner's Objection filed November 9, 2005. The Court reviews the Report and Recommendation of the Magistrate Judge *de novo* in light of Petitioner's Objections.

The Court agrees with the Magistrate Judge that the petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 herein is untimely. The petition was filed more than one year after Petitioner's conviction became final. Statutory tolling is inapplicable because by the time Petitioner filed his application for post-conviction relief on May 27, 2005, the one-year limitations period for filing his habeas corpus petition had already expired. *See Fisher v. Gibson*, 262 F.2d 1135, 1142-43 (10<sup>th</sup> Cir. 2001), *cert. denied*, 535 U.S. 1034, 122 S.Ct. 1789, 152 L.Ed.2d 649 (2002). Additionally, Petitioner has not shown that he is entitled to equitable tolling. In this regard, the Court agrees with the Magistrate Judge that Petitioner's "alleged ignorance of the state procedures . . . [does] not explain the delay preceding the federal habeas action." Report and Recommendation at pp. 4-5.

In accordance with the foregoing, the Report and Recommendation of the Magistrate Judge is ADOPTED in its entirety, Respondents' motion to dismiss is GRANTED and the petition herein is DISMISSED as time-barred.

**It is so ordered this 15<sup>th</sup> day of November, 2005.**

  
DAVID L. RUSSELL  
UNITED STATES DISTRICT JUDGE